

## **900 KAR 10:200. Kentucky State Based Exchange on the Federal Platform.**

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156.

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of Health Benefit and Information Exchange, has responsibility to administer the State-Based Exchange on the Federal Platform. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to the transition from the Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) and the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.

(2) "Agent" is defined by KRS 304.9-020(1).

(3) "Application assister" means a CAC, in-person assister, or navigator.

(4) "Benefind" means information technology infrastructure utilized for application and enrollment in programs including the:

(a) Supplemental Nutrition Assistance Program (SNAP);

(b) Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.; or

(d) Kentucky Transitional Assistance Program (K-TAP).

(5) "Cabinet for Health and Family Services" or "CHFS" is defined by KRS 194A.005.

(6) "Certified application counselor" or "CAC" means an individual employed by, or volunteer of, an entity designated by the office to perform the functions described in 45 C.F.R. 155.225.

(7) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(8) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(9) "Enrollee" means an eligible individual enrolled in a qualified health plan or qualified stand-alone dental plan.

(10) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(11) "Health plan form" or "form" means an application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement filed in accordance with 806 KAR 14:007.

(12) "In-person assister" or "IPA" means an entity or individual selected by the office to perform the functions described in 45 C.F.R. 155.205(d) and (e) and 45 C.F.R. 155.215.

(13) "Indian" is defined by 25 U.S.C. 450b(d).

(14) "Individual exchange" means the Kentucky Health Benefit Exchange or SBE-FP that serves the individual health insurance market.

(15) "Individual market" is defined by KRS 304.17A-005(26).

(16) "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et

seq.;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code, 26 U.S.C. 36B, available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act, 42 U.S.C. 18701.

(17) "Issuer" is defined by 45 C.F.R. 144.103.

(18) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SADP that utilizes the state provided information technology infrastructure known as kynect to provide for eligibility determinations and consumer enrollment in qualified health plans and stand-alone dental plans and that includes:

(a) An individual exchange; and

(b) SHOP.

(19) "Kentucky Office of Health Benefit and Information Exchange," "KOHBE," or "office" means the office created to administer the KHBE and the SBE-FP.

(20) "Kentucky online gateway" or "KOG" means the system for identity authentication services for users requesting to be listed on the office's search tool for an application assister or agent.

(21) "Navigator" means an entity selected by the office that shall comply with the requirements of 1311(i) of the ACA, 45 C.F.R. 155.205(d)-(e), and 45 C.F.R. 155.210.

(22) "Organization" means an entity as follows:

(a) Community health center;

(b) Hospital;

(c) Health care provider;

(d) Indian health service provider;

(e) Ryan White HIV/AIDS provider;

(f) Behavioral or mental health provider; or

(g) An agency with experience providing social services, energy assistance, or tax assistance that is a:

1. Non-federal government entity;

2. 501(c) organization; or

3. Local government agency.

(23) "Participating agent" means an agent as defined by KRS 304.9-020(1) who has been registered with the office on KOG.

(24) "Plan management data template" means the data collection templates used to facilitate data submission through SERFF for certification of qualified health plan issuers, qualified health plans, qualified stand-alone dental plan issuers, and qualified stand-alone dental plans as established in CMS Form Number CMS-10433, as amended.

(25) "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(26) "Qualified employer" means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs or SADPs in the small group market offered through the SHOP.

(27) "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification.

(28) "Qualified individual" means an individual who has been determined eligible to enroll through the SBE-FP in a QHP or SADP in the individual market.

(29) "SHOP" means a Small Business Health Options Program operated by the Kentucky Health Benefit Exchange or the SBE-FP through which a qualified employer can provide a qualified employee and their dependents with access to one (1) or more QHPs or SADPs.

(30) "Small group" is defined by KRS 304.17A-005(42).

(31) "Stand-alone dental plan" or "SADP" means a dental plan as described by 45 C.F.R. 155.1065 that has been certified to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(32) "State Based Exchange on the Federal Platform" or "SBE-FP" means the state-based health insurance exchange approved by HHS pursuant to 45 C.F.R. 155.105 that will utilize the federally provided information technology infrastructure known as healthcare.gov to provide for eligibility determinations and consumer enrollment in qualified health plans and stand-alone dental plans and that includes:

(a) An individual exchange; and

(b) SHOP.

(33) "System for Electronic Rate and Form Filing" or "SERFF" means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and a state to receive, comment on, and approve or reject rate and form filings.

Section 2. Eligibility and Enrollment. (1) The SBE-FP shall provide for an eligibility determination and consumer enrollment in a qualified health plan or a stand-alone dental plan.

(2) The SBE-FP shall rely on the federal call center to perform telephonic consumer support in applying for, and enrolling in, a qualified health plan or a stand-alone dental plan.

Section 3. Assistance for New Issuer Participation on SBE-FP. The office shall ensure any new issuer in the state is prepared to participate on the SBE-FP for each new plan year. The office shall provide information on:

(1) Issuer registration;

(2) Onboarding;

(3) Training; and

(4) Testing related transfer of electronic files.

Section 4. Participation Standards for Issuers Offering a Qualified Health Plan. (1) In order to participate on the SBE-FP, an issuer offering a QHP shall meet the following criteria:

(a) Hold a certificate of authority that would permit the issuer to offer a health benefit plan and be in good standing with the Kentucky Department of Insurance;

(b) Comply with benefit design standards as defined in 45 C.F.R. 156.20;

(c) Comply with applicable standards described in 45 C.F.R. Part 153;

(d) Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;

(e) Comply with the non-discrimination requirements in 42 U.S.C. 300gg-5;

(f) Comply with the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515;

(g) If not a managed care plan, meet the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515;

(h) Submit verification to DOI of compliance with the standards applicable to essential community providers of 45 C.F.R. 156.235;

(i) Submit verification to DOI of compliance with the meaningful difference standards of 45 C.F.R. 156.298;

(j) Submit verification of issuer compliance with the requirements of 45 C.F.R. 156.340(a)(4), including compliance of a delegated and downstream entity;

(k) Submit to DOI:

1. A quality improvement strategy plan in compliance with 45 C.F.R. 156.200(b)(5) and 45 C.F.R. 156.1130; and

2. An attestation that the issuer shall comply with the quality requirements identified in 45 C.F.R. 156.200(b)(5);

(l) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1);

(m) Pursuant to 45 C.F.R. 156.275(a)(2), authorize the accrediting entity that accredits the QHP issuer to release to the office and HHS:

1. A copy of the most recent accreditation survey; and

2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings;

(n) For a QHP issuer that has not received accreditation, submit an attestation to the office that the issuer shall obtain accreditation in accordance with paragraph (l) of this subsection;

(o) Maintain accreditation so long as the QHP issuer offers a QHP;

(p) Comply with the provisions of 45 C.F.R. 156.210;

(q) For the individual exchange, offer at least a:

1. QHP with a silver metal level of coverage;

2. QHP with a gold metal level of coverage; and

3. Child-only plan;

(r) For the SHOP exchange, offer at least a:

1. QHP with a silver metal level of coverage; and

2. QHP with a gold metal level of coverage;

(s) Make its provider directory for an SADP available:

1. To potential enrollees in hard copy upon request; and

2. In accordance with 45 C.F.R. 156.230;

(t) Submit to DOI through the SERFF system:

1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;

2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder; and

3. Plan management data templates;

(u) 1. Receive approval from DOI for a rate filing prior to implementation of the approved rate; and

2. For a rate increase, post the justification prominently on the QHP issuer's Web site;

(v) Upon request by the DOI, submit an SBC for review of compliance with 45 C.F.R. 147.200;

(w) Make available a published up-to-date, accurate, and complete formulary drug list on its Web site in a format and at time pursuant to 45 C.F.R. 156.122; and

(x) Comply with the maintenance of records standards pursuant to 45 C.F.R. 156.705.

(2) To be certified as a QHP by DOI for participation on the SBE-FP, a health plan shall provide coverage of the:

(a) Essential health benefits; or

(b) Essential health benefits excluding pediatric dental benefits if there is at least one (1) SADP offered in each county through the SBE-FP.

(3) The office shall ensure that each issuer that offers a QHP shall report changes in ownership pursuant to 45 C.F.R. 156.330 to HHS.

(4) The DOI shall certify a QHP within the timeframe specified by HHS.

Section 5. Participation Standards for Issuers Offering a Stand-Alone Dental Plan. (1) In order to participate on the SBE-FP, an issuer offering a stand-alone dental plan shall meet the following criteria:

(a) Hold a certificate of authority that would permit the issuer to offer a dental plan and be in good standing with the Kentucky Department of Insurance;

(b) Offer a dental plan in the individual exchange or SHOP exchange that complies with the requirements of KRS Chapter 304 Subtitle 17C;

(c) Submit to DOI through the SERFF system:

1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;

2. Rate filings in compliance with KRS 304.17-380 and administrative regulations promulgated thereunder; and

3. Dental plan management data templates;

(d) Comply with the:

1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to ensure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.230;

2. Requirements for stand-alone dental plans referenced in 45 C.F.R. 156 Subpart E; and

3. Essential community provider requirements in 45 C.F.R. 156.235;

(e) Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; and

(f) Make its provider directory for an SADP available:

1. To potential enrollees in hard copy upon request; and

2. In accordance with 45 C.F.R. 156.230.

(2) To be certified as an SADP by DOI for participation on the SBE-FP, a stand-alone dental plan shall:

(a) Provide the pediatric dental essential health benefits required by 42 U.S.C. 18022(b)(1)(J) for individuals up to twenty-one (21) years of age;

(b) Pursuant to 45 C.F.R. 156.150, provide within a variation of plus or minus two (2) percentage points:

1. A low level of coverage with an actuarial value of seventy (70) percent; or

2. A high level of coverage with an actuarial value of eighty-five (85) percent; and

(c) Have an annual limitation on cost-sharing for a stand-alone dental plan covering the pediatric dental EHB under 45 C.F.R. 155.1065 at or below:

1. \$350 for a plan with one (1) child enrollee; or

2. \$700 for a plan with two (2) or more child enrollees.

(3) The office shall ensure that each issuer that offers an SADP shall report changes in ownership pursuant to 45 C.F.R. 156.330 to HHS.

(4) The DOI shall certify an SADP within the timeframe specified by HHS.

Section 6. Consistency of Premium Rates on or off the SBE-FP for the Same QHP or SADP. A QHP or SADP issuer shall charge the same premium rate without regard to whether the plan is offered on or off the SBE-FP.

Section 7. Enforcement by DOI. The DOI shall be responsible for enforcing the require-

ments of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 8. Toll-Free Hotline. The office shall operate a toll-free hotline to respond to requests from consumers including the capability to direct a consumer to the federally-operated call center or healthcare.gov to apply for and enroll in QHP or SADP coverage.

Section 9. SBE-FP Web site. The office shall operate a Web site that shall provide:

- (1) Information for a consumer;
- (2) The capability to direct a consumer to healthcare.gov to apply for and enroll in QHP or SADP coverage; and
- (3) A tool for a consumer to use to find a local Navigator, CAC, IPA, or agent for assistance in applying for and enrolling in a QHP or SADP.

Section 10. KHBE Termination of Operations on the Individual and SHOP Exchange Utilizing kynect. KHBE shall not accept an enrollment from an individual on the individual exchange or from a qualified employee of a qualified employer for participation on the SHOP exchange with an effective date of coverage after December 31, 2016, unless the enrollment is the result of a special enrollment period granted to a qualified employee of a qualified employer participating on kynect in accordance with the criteria in 900 KAR 10:020.

Section 11. KOHBIE Application Assister Program. (1) The KOHBIE Application Assister Program, in accordance with the accessibility standards of 42 C.F.R. 155.205(c) and (d), shall include the following programs:

- (a) The certified application counselor program described in Section 12 of this administrative regulation; or
  - (b) The in-person assister and navigator program described in Section 13 of this administrative regulation.
- (2) An application assister shall:
- (a) Complete QHP, SADP, and SHOP training provided by HHS;
  - (b) Complete Medicaid and CHIP training provided by CHFS;
  - (c) Submit certification of completion of the HHS and CHFS training to the office; and
  - (d) Sign a participation agreement with the office.
- (3) The office and an application assister shall refer a consumer to other consumer assistance programs in Kentucky when available and appropriate.
- (4) An application assister shall be prepared to serve both the individual exchange, SHOP, Medicaid program, and CHIP.
- (5) An application assister shall comply with the privacy and security standards consistent with 45 C.F.R. 155.260.

Section 12. Certified Application Counselor Program. (1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

- (2) An organization may apply to the office to be designated as a certified application counselor.
- (3) Upon designation by the office to participate in the certified application counselor program, an organization shall:
  - (a) Act in the best interest of an applicant;
  - (b) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to an application assister; and

- (c) Provide monthly reports of activities to the office.
- (4) Staff and volunteers of a certified application counselor organization shall act as an application assister to:
  - (a) Provide information about insurance affordability programs and QHP or SADP coverage options;
  - (b) Assist an individual or employee to apply for coverage in a QHP or SADP through the SBE-FP or an insurance affordability program through benefit; and
  - (c) Help to facilitate enrollment of a qualified individual in a QHP, SADP, or an insurance affordability program.
- (5) An individual operating as a certified application counselor shall:
  - (a) Be identified by a designated organization described in subsection (2) of this section as an employee or a volunteer of the designated organization;
  - (b) Agree to act in the best interest of an applicant;
  - (c) Provide information with reasonable accommodation for an individual with a disability, as defined by the Americans with Disabilities Act, if providing in-person assistance; and
  - (d) Register with the office through the Kentucky online gateway.

Section 13. In-Person Assister and Navigator Program. (1) In accordance with 45 C.F.R. 155.205(d) and (e), 45 C.F.R. 155.315, 45 C.F.R. 155.210(d) to (e), and 45 C.F.R. 210, the office shall establish an IPA and navigator program to authorize an eligible public or private entity to carry out consumer assistance functions as described in 45 C.F.R. 205 and this section.

- (2) An entity wishing to participate as an IPA or navigator shall:
  - (a) Be awarded a contract by the office pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;
  - (b) Designate an individual as the participating entity representative who shall:
    - 1. Register with the office through the Kentucky online gateway as the individual authorized by the agency;
    - 2. Serve as a primary contact for the office;
    - 3. Be responsible for ensuring that only office certified application assister employees of the entity or navigators are registered through the Kentucky online gateway;
    - 4. Comply with 45 C.F.R. 155.210(d) regarding a conflict of interest; and
    - 5. As an individual IPA or navigator employee, comply with this subsection;
  - (c) Designate the individual employees who shall participate through the IPA application assister or navigator entity and who shall register with the office through the Kentucky online gateway;
  - (d) Submit to the office a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e); and
  - (e) Provide monthly reports of activities to the office.
- (3) An employee designated as an IPA or navigator by the application assister entity shall:
  - (a) Be eighteen (18) years of age or older;
  - (b) Provide an authorization to the IPA or navigator entity to conduct a state background check for evidence of good character; and
  - (c) Travel, if necessary, to assist applicants with enrollment.
- (4) An IPA or navigator entity and its employees shall:
  - (a) Inform applicants of the functions and responsibilities of all application assister and participating agents;
  - (b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with prescreening and completion of the application process; and
  - (c) Provide technical support to other application assister, application assister entities, or the

office upon request.

(5) Upon authorization by the office, an IPA or navigator employee may assist:

(a) A qualified individual with enrollment in any QHP or SADP offered through the SBE-FP in the individual market;

(b) A qualified employer with selecting a QHP or SADP and enroll a qualified employee in a QHP or SADP offered through the SBE-FP in the small group market;

(c) An individual with applying for advance payments of the premium tax credit and cost-sharing reductions; and

(d) An individual with applying for insurance affordability programs, including Medicaid or KCHIP.

(6) An IPA or navigator entity and its employees shall:

(a) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about a QHP, SADP, or insurance affordability program;

(b) Provide information and services in a fair, accurate, and impartial manner; and

(c) Provide information regarding other health programs.

(7) An IPA or navigator entity and its employees shall not:

(a) Impose any charge or fee on an applicant for their assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(8) An IPA or navigator entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(9) An IPA or navigator entity or its employees shall provide referrals to the DOI or HHS for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(10) An IPA or navigator entity or its employees shall demonstrate to the office that the entity has existing relationships, or could readily establish relationships, with:

(a) Employers and employees;

(b) Consumers, including uninsured and underinsured consumers; or

(c) Self-employed individuals eligible for a QHP, SADP, or other insurance affordability program.

(11)(a) In accordance with Section 14 of this administrative regulation, the office shall withdraw certification if it finds noncompliance with the terms and conditions of the participation agreement from:

1. An individual in-person assister;

2. All in-person assisters associated with a particular entity;

3. An individual navigator; or

4. All navigators associated with a particular entity.

(b) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

Section 14. Withdrawal of Certification for Application Assisters and Appeals. (1) If the office finds noncompliance with the terms and conditions of a participation agreement with an application assister, the office shall:

Withdraw certification from:

1. An individual in-person assister;
2. All in-person assisters associated with a particular entity;
3. An individual navigator;
4. All navigators associated with a particular entity;
5. An individual certified application counselor; or
6. All certification application counselors of a designated organization;

(b) Provide the application assister entity or application assister employee with notice that the applicable certification shall be withdrawn as of the date on the notice;

(c) Allow the application assister entity or application assister employee an opportunity to submit evidence of compliance or additional information within ten (10) business days of notice of withdrawal;

(d) Review any information submitted by the application assister entity or application assister employee; and

(e) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the application assister entity or application assister employee.

(2) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

(3) An application assister entity or application assister employee may appeal a final decision to withdraw the applicable certification by submitting a written request to the office within ten (10) business days of the final decision.

(4) After one (1) year following a decision to withdraw certification of an application assister entity or application assister employee, the employee or entity may reapply in accordance with this administrative regulation.

Section 15. Agents. An agent wishing to participate on the SBE-FP in accordance with 42 U.S.C. 18031, 45 C.F.R. Part 155 shall:

- (1) Complete QHP, SADP, and SHOP training provided by HHS;
- (2) Submit certification of completion of the HHS training to the office; and
- (3) Not be listed on the agent broker suspension and termination list on [healthcare.gov](https://healthcare.gov).

Section 16. Right to Appeal to HHS. (1) If an applicant or enrollee disagrees with an eligibility determination made on the SBE-FP, the applicant or enrollee may request an appeal from HHS.

(2) An applicant or an enrollee denied a request for an exemption by HHS under 45 C.F.R. 155.625(b) may appeal the decision to HHS. (43 Ky.R. 1125; eff. 3-3-2017.)